



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 08, 2022

IN THE MATTER OF:

Appeal Board No. 622077

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 622077 and 622078, the claimant appeals from the decisions of the Administrative Law Judge filed February 23, 2022, which sustained the initial determinations disqualifying the claimant from receiving benefits, effective December 12, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$9,900.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$3,546.00 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer and the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was a peer advocate and case manager for a drug and alcohol rehabilitation facility from February 19, 2018, until December 11, 2020. His job duties included screening incoming clients and securing funding for housing, medical care and food from county departments of Social Services for clients leaving the facility. The claimant had a small office and would meet with clients in person.

During the COVID-19 pandemic, protocols were established by the governing body in Albany, New York. Staff and clients were required to wear masks and socially distance. Clients who tested positive or were in close contact with individuals who tested positive, were required to be quarantined. However, clients who refused to wear masks were not forced to wear a mask nor were they removed from the program. Clients who tested positive or were in close contact with someone who tested positive, were not forced to quarantine if they did not do so voluntarily.

The claimant is a diabetic who cares for an elderly relative. The claimant's doctor advised him that he was a high risk for severe symptoms from COVID-19 and had a higher mortality rate. The doctor advised the claimant that he might want to reconsider the nature of his work.

The claimant complained to his supervisor about clients not being masked. He was told that they could not be forced to wear masks. When he asked to work from home, he was told that he was essential and had to work from the office. When he asked if he could refuse to work with unmasked clients, since they could not socially distance in his small office space, he was told he had to work with the clients, masked or not. When he asked for other PPE, he was told that it was a financial burden to provide the accommodations he requested. The claimant submitted his resignation effective December 12, 2020.

The claimant received the benefits at issue.

OPINION: The credible evidence establishes that the claimant resigned from his employment due to his concerns about the employer's lack of COVID-19 protocol enforcement. The claimant's credible and consistent testimony regarding the lack of mask enforcement, social distancing and quarantining, was supported by the testimony of his witness, an LPN in the facility. The employer witness admitted that she did not work in the claimant's facility and her contact was limited to site visits. We therefore credit that the claimant made multiple complaints regarding the failure of the employer to enforce the employer's protocols and was continually told that there was nothing that could be done to enforce the protocol policy with clients. Even if there was PPE available to staff at the facility, the claimant's witness credibly testified that she was not advised that it was there, and there is no reason to believe that claimant knew where it was as he was told that his requests for PPE were not cost effective. We note that the claimant was at high risk due to his medical condition, and while his doctor did not advise him to quit, the doctor did

advise him to rethink his employment choices. We therefore conclude that the claimant's attempt to find a remedy to his situation, and the employer's insistence that they could not enforce the safety protocols, provided him with good cause to quit this employment. (See Appeal Board No. 615332)

As the claimant is not disqualified and is entitled to benefits, there was no overpayment.

DECISION: The decisions of the Administrative Law Judge are reversed.

The initial determinations, determinations disqualifying the claimant from receiving benefits, effective December 12, 2020, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$9,900.00 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$3,546.00 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER